UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1995/471
8 June 1995

ORIGINAL: ENGLISH

LETTER DATED 30 MAY 1995 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith, for the information of the Security Council, the following details concerning the seventeenth regular session of the Governing Council of the United Nations Compensation Commission, held at the Palais des Nations in Geneva from 15 to 17 May 1995.

At its fifty-second meeting, the Governing Council heard statements from the representatives of Iraq and Kuwait, which are not members of the Council. It also examined and took note of the reports of Governments on the distribution of payments to claimants (S/AC.26/1995/R.16) pursuant to paragraph 4 of its decision 18 (S/AC.26/Dec.18 (1994)).

At its fifty-third meeting, the Council considered and approved the recommendations made by the Panel of Commissioners concerning the third instalment of individual claims for departure from Iraq and Kuwait (category A claims). The third instalment concerns 132,080 claims submitted by 16 countries totalling US$ 517,650,500, which brings the total of awards issued in that category to 350,000 from 67 countries and international organizations presenting Palestinian claims for a value of $1.3 billion. The texts of the corresponding decision and report (S/AC.26/Dec.29 (1995) and S/AC.26/1995/3) are attached.

The Council also examined the ninth report of the Executive Secretary (S/AC.26/1995/R.17 and Add.1) concerning consolidated claims in category E submitted after the expiration of the filing period, in conformity with article 12, paragraph 2, of the provisional rules for claim procedures (S/24363, annex I). It was decided that, hereafter, except as otherwise provided in decision 12 (S/24611, annex I) or for reasons of civil disorder, the Governing Council would not accept the filing of claims of corporations and other entities in category E and claims of Governments and international organizations in category F after 1 January 1996. Decision S/AC.26/Dec.30 (1995) is attached as annex III.

With regard to claims in categories A, B, C and D submitted after the expiration of the filing period that are affected by decision 23, i.e. after the deadline of 1 January 1995, the Council examined the second report of the

Executive Secretary (S/AC.26/1995/R.18 and Add.1 and 2) and accepted one Canadian claim and the claims from Bangladesh, Jordan, the Syrian Arab Republic and Turkey for which the explanations offered by the Governments met the conditions set by the Council. In this context, the secretariat was asked to write to all Governments that have filed claims in those categories, spelling out the Council's criteria of "strong and compelling reasons" for accepting late submission of claims and indicating that after 1 September 1995 claims that are filed late as a result of delays attributable to the Governments will no longer be considered.

In the discussion of the item on processing and payment of claims, the secretariat provided information on the jurisdictional phase of the Egyptian workers' claims and the programme of work in each of the six categories of claims.

The Committee on Administrative Matters held its fifth meeting on 16 May 1995. At this meeting of the Committee, the representatives of Bangladesh, Egypt and India (not members of the Council) addressed the Committee, emphasizing that payments of the remaining awards approved by the Council in respect of category B claims should be made as soon as possible. They pointed out the highly humanitarian aspect of the issue.

I would like to bring to your attention the fact that, following the issue raised by the above-mentioned Governments, whose claimants are still awaiting compensation in category B claims, and in view of the fact that the sums awarded are only approximately $8.1 million, the Governing Council decided to convene a special session in the middle of the month of July 1995 in order to deal with the matter. Also in this context, an appeal was made to all Governments to make serious efforts to locate and transfer the proceeds from the sale of Iraqi oil and petroleum products that had been exported but not paid for at the time of the invasion of Kuwait as required by Security Council resolution 778 (1994). The issues of the ships seized in the Persian Gulf for violating the United Nations embargo and the non-accountability of the revenues due to the Compensation Fund from the sale of this cargo were also raised.

It was agreed that the next regular session of the Council in 1995 would be held from 9 to 13 October 1995.

May I avail myself of this opportunity to reiterate my concern, which is also that of the members of the Governing Council, about the serious negative implications that the lack of resources to pay compensation awards has on the credibility of the Compensation Commission and ultimately on the whole of the United Nations system. It is the Governing Council's earnest hope that the Security Council will find appropriate solutions to permit the large number of compensation awards already issued to be honoured.

(Signed) Giuseppe BALDOCCI
President

Annex I

Decision 29 concerning the third instalment of claims for departure from Iraq or Kuwait (category A claims) taken by the Governing Council of the United Nations Compensation Commission at its 53rd meeting, held on 17 May 1995 at Geneva*

The Governing Council,

Having received, in accordance with article 37 of the provisional rules for claims procedure, the third report of the Panel of Commissioners appointed to review individual claims for departure from Iraq or Kuwait (category A claims), covering 132,080 individual claims, 1/

1. Approves the recommendations made by the Panel of Commissioners;

2. Accordingly decides, pursuant to article 40 of the rules and subject to paragraph 4 below, to approve the amounts of the recommended awards concerning the 132,080 claims covered in the annex to the report, as follows:

Country	No. of claims recommended for payment	Amount of compensation recommended (US$)
Australia	7	35 000
Bahrain	1	2 500
Egypt	63 064	174 295 500
Federal Republic of Yugoslavia (Serbia and Montenegro)	245	1 016 000
India	4 083	16 173 500
Iran (Islamic Republic of)	9 175	68 089 000
Jordan	19 670	93 155 000
Kuwait	20 739	104 650 500
Pakistan	43	180 500

* Originally issued as document S/AC.26/Dec.29 (1995).

1/ For the text of the report, see annex II. In conformity with the provisions on confidentiality in the provisional rules for claims procedure (arts. 30, para. 1, and 40, para. 5), the table containing the breakdown of the amounts to be paid to each individual claimant will not be made public, but will be provided to the respective Governments and international organizations separately.

Country	No. of claims recommended for payment	Amount of compensation recommended (US$)
Philippines	1 542	6 039 500
Republic of Korea	8	20 000
Russian Federation	19	112 000
Sri Lanka	13 250	52 929 500
Sudan	11	43 500
United States of America	38	168 500
Viet Nam	185	740 000
Total	132 080	517 650 500

3. Reaffirms that, when funds become available, payments shall be made in accordance with decision 17;

4. Notes that, where claimants awarded the higher amounts available under category A are also found to have filed claims in other categories, their awards will be adjusted in accordance with the provisions of decision 21;

5. Recalls that, when payments are made in accordance with decision 17 and pursuant to the terms of decision 18, Governments and appropriate authorities concerned shall distribute amounts received in respect of approved awards within six months of receiving payment and shall, not later than three months after the expiration of this time-limit, provide information on such distribution;

6. Requests the Executive Secretary to provide copies of the report and the annex thereto to the Secretary-General and copies of the report and its annex as well as the tables containing the breakdown of the amounts to be paid to each individual claimant to each respective Government and international organization, and reminds these Governments and international organizations of their obligation to take the appropriate measures to preserve the confidentiality of those tables.

Annex II

Report and recommendations of the Panel of Commissioners concerning the third instalment of claims for departure from Iraq or Kuwait (category A claims)*

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 2	6
II.	CATEGORY A CLAIMS IN GENERAL	3	6
III.	EVIDENTIARY STANDARD APPLICABLE TO CATEGORY A CLAIMS	4	6
IV.	METHODOLOGY FOR PROCESSING CATEGORY A CLAIMS	5 - 9	7
	A. Several methods	5 - 6	7
	B. Third instalment of category A claims	7 - 9	7
V.	PROCESSING OF THE THIRD INSTALMENT OF CLAIMS	10 - 21	8
	A. Processing by the secretariat	10	8
	B. Validation	11 - 12	8
	C. Other issues	13 - 16	8
	1. Departure date outside the jurisdictional period	13	8
	2. Limitations on claiming in more than one category	14 - 15	8
	3. Interest	16	9
	D. Computerized verification of category A claims in the third instalment	17 - 21	9
	1. Departure from Kuwait and Iraq during the Gulf crisis	17	9
	2. Computerized matching	18	9
	3. Arrival/departure records	19	10
	4. Evidentiary value of the various records	20 - 21	10
VI.	RECOMMENDED COMPENSATION FOR THE THIRD INSTALMENT OF CATEGORY A CLAIMS	22 - 25	10

---

* Originally issued as document S/AC.26/1995/3.

I. INTRODUCTION

1. This third report contains the recommendations to the Governing Council of the Panel of Commissioners appointed to review claims for departure from Iraq or Kuwait (category A claims) concerning the third instalment of claims, (S/AC.26/1991/1) pursuant to article 37 (e) of the provisional rules for claims procedure (S/24363, annex I). Category A claims are among the "most urgent claims" for which the Governing Council decision on criteria for expedited processing of urgent claims has set forth simple and expedited procedures in order to provide prompt compensation in full or substantial interim relief. The present report makes compensation recommendations for the category A claims reviewed in the third instalment of claims submitted to the Panel by the Executive Secretary of the United Nations Compensation Commission. In considering these claims, the Panel has, in accordance with article 31 of the rules, based itself on Security Council resolution 687 (1991), the criteria established by the Governing Council for this category of claims and other pertinent decisions of the Governing Council.

2. As described in the first report (S/1994/1337, annex II), the Panel held three preparatory meetings with the secretariat of the Commission to discuss the methodology and procedures used by the secretariat in the processing of the first instalment of category A claims. The same methodology and procedures have been applied to the second and third instalments of claims. The Panel held one substantive session to review claims in the third instalment from 14 to 16 March 1995.

II. CATEGORY A CLAIMS IN GENERAL

3. Category A claims are claims for departure from Iraq or Kuwait during the period from 2 August 1990 to 2 March 1991. For a more detailed description of the nature of category A claims, the claim form A and the amounts that can be claimed under this category, reference is made to section I of the first report.

III. EVIDENTIARY STANDARD APPLICABLE TO CATEGORY A CLAIMS

4. The evidentiary standard applicable to category A claims is stated in decision 1 and more specifically in article 35 (a) of the rules. As is explained more fully in paragraphs 17 to 21 below, all of the claims in the third instalment were verified to meet this standard by way of computerized matching of the claims in question against an arrival/departure database that was developed from documentary evidence such as arrival/departure records made available by various Governments and international organizations. The Panel therefore was not required to review evidence attached to those claim forms.

IV. METHODOLOGY FOR PROCESSING CATEGORY A CLAIMS

A. Several methods

5. Section III A of the first report sets out the different methods envisaged by the rules for the verification of category A claims, i.e., matching, sampling and additional verification "as circumstances warrant". The computerized matching of the claims against the arrival/departure database has been the methodology relied upon for the verification of claims in the third instalment.

6. A first matching run was performed for all claims that were filed with the Commission before 1 July 1993. A second matching run was subsequently performed for all claims the verification of which had not been attempted in the context of the first instalment, i.e., claims filed later than 1 July 1993 (for the number of claims and the country-wise composition comprising the first instalment, see S/1994/1337, annex III, sect. III.B). Also included in the second matching run were claims that were filed prior to 1 July 1993 but which were affected by technical deficiencies preventing them from being considered for the first instalment, provided that such deficiencies had been remedied in time to permit inclusion in the second matching run. Claims included in the second matching run were verified against two additional sets of arrival/departure records that had not been used in the first run because of technical problems, i.e., those provided by the Governments of the Islamic Republic of Iran and Jordan.

B. Third instalment of category A claims

7. In determining the total number of claims and the country-wise composition comprising the third instalment of category A claims, the Panel applied the general guidelines set forth by the Governing Council for the composition of the several instalments of category A claims, taking into account various considerations such as the total number of claims submitted by different countries, the dates of their submission, the estimate of time it would take to process claims even through expedited procedures, and the estimate of the funds that might be available. The Panel's recommendations, as set out in paragraphs 22 to 25 below, for the payment of claims listed in the summary table (see annex I) are made according to such criteria and procedures as elaborated below.

8. The Panel reviewed and recommends for payment in the third instalment all of the claims that had been successfully verified in the second matching run and had not been included in the second instalment.

9. The number of claims per submitting country that the Panel recommends for payment in the context of this instalment is listed in the second column of the summary table.

V. PROCESSING OF THE THIRD INSTALMENT OF CLAIMS

A. Processing by the secretariat

10. All of the claims contained in the third instalment were subjected to the processes described in section IV A of the first report.

B. Validation

11. As was the case for the claims contained in the first and second instalments, before matching the claims in the third instalment against the arrival/departure database, the claims were passed through a preliminary computerized screening process hereinafter referred to as "validation". The purpose of validation is threefold. First, some aspects of the format of the claims are checked. Second, the Iraqi claimants are separated from the non-Iraqi claimants. Third, the validation programme checks whether there are any duplicate claims in the A claims category.

12. As explained more fully in section IV B 3 of the first report, the Panel instructed the secretariat to analyse further the claims identified and separated as possible duplicates to confirm whether such claims were indeed duplicates. The secretariat is in the process of examining those claims. In view of the considerations outlined in section IV B 3 of the first report, the Panel recommends that Governments keep an accurate record of the persons to whom amounts awarded are paid in order to minimize the risk of multiple recovery on the basis of a duplicate A claim.

C. Other issues

1. Departure date outside the jurisdictional period

13. As in the first and second instalments, claimants in the third instalment who stated in their claim form a date of departure outside the period from 2 August 1990 to 2 March 1991 were deemed by the Panel to have misinterpreted the meaning of the term "date of departure" and, therefore, were not dismissed on the basis of such a date if the claimants in question nevertheless matched against an arrival/departure record establishing departure within the jurisdictional period.

2. Limitations on claiming in more than one category

14. The Governing Council's decision on multi-category claims (S/1994/1337, annex IV, decision 21) establishes that claimants who have selected a higher amount under category A (US$ 4,000 or US$ 8,000) and have also filed a claim in category B, C or D, will be deemed to have selected the corresponding lower amount under category A. With regard to this decision, the Panel, in its second report (S/1995/285, annex II, sect. IV.C.2) had drawn the attention of the Governing Council to the prejudice caused by that decision to the claimants that had submitted category A claims and had abided by the rules, which required them

to agree not to file claims in another category. The Panel had expressed the view that the Governing Council might wish to review that matter and had indicated the lines along which a fair solution could be achieved by an appropriate decision of the Governing Council that would maintain "a just balance between such claimants and those who will benefit from the application of decision 21".

15. The Panel notes that, at its sixteenth session, when approving its second report, the Governing Council, inter alia, stressed that it shared the Commissioners' concern that no claimant who properly followed the Commission's procedures in submitting a category A claim should be prejudiced as a result of the application of decision 21. The Governing Council decided to keep under advisement, and at an appropriate time consider, whether the Commission's procedures for making payments to successful claimants should be implemented as proposed by the Commissioners, i.e., that all successful claimants who had submitted category A claims for higher amounts but had not submitted claims in any other category receive full payment of those amounts, pursuant to the terms of decision 17, before any additional amounts beyond the initial US$ 2,500 are paid to the category A claimants who submitted claims for such higher amounts but had also filed claims in other categories. In considering the matter, the Governing Council would take into account the views of the secretariat regarding this proposal's feasibility and implications.

3. Interest

16. On the basis of the considerations formulated in section IV C 3 of its first report, the Panel reiterates its recommendation that interest should be paid on the awarded amounts in category A claims in accordance with the Governing Council decision on "Awards of Interest" (decision 16). With respect to category A claims, the phrase "the date the loss occurred" in decision 16 should be interpreted to be 2 August 1990.

D. Computerized verification of category A claims in the third instalment

1. Departure from Kuwait and Iraq during the Gulf crisis

17. With regard to the background information on the number of departees and the circumstances of their departure, reference is made to section IV D 1 of the first report.

2. Computerized matching

18. The third instalment of claims was subjected to the same computerized matching process that had been used for the verification of the first and second instalments of category A claims. The goal of this computerized verification process was to determine whether a given claimant appeared in one or more of the records that constitute the arrival/departure database and which the Panel found to establish departure from Kuwait or Iraq during the relevant jurisdictional

period. In order to achieve this goal, the secretariat used the same specially designed software as in the first instalment. The general characteristics of this computerized process and the software supporting it were reviewed by and met the approval of the Panel; they are described in detail in section IV D 4 of the first report.

3. Arrival/departure records

19. The arrival/departure records used by the secretariat for the computerized verification of claims in the third instalment include all those utilized for the verification of claims in the first and second instalments and referred to in section IV D 2 of the first report and section IV D 3 of the second report.

4. Evidentiary value of the various records

20. The evidentiary value of the arrival/departure records provided by a number of Governments and international organizations was determined by the Panel in section IV D 3 of the first report and section IV D 4 of the second report.

21. The Panel thus determined that a claimant who had matched against one or more of these records met the applicable evidentiary requirements and was entitled to compensation.

VI. RECOMMENDED COMPENSATION FOR THE THIRD INSTALMENT OF CATEGORY A CLAIMS

22. Pursuant to article 37 (e) of the rules, the Panel hereby presents its final recommendations on the claims comprising the third instalment of category A claims.

23. Having considered the results of the verification of claims accomplished through computerized matching and further having considered all relevant circumstances and materials available with the Commission, the Panel recommends for payment of compensation 132,080 claims submitted by 16 countries. The total recommended amount of compensation for the third instalment comes to US$ 517,650,500.

24. The Panel records that claims that could not be included in the third instalment owing to such factors as defective format or possible duplication are expected to receive consideration when subsequent instalments are processed.

25. The attached summary table (see annex I) lists on a country-by-country basis the number of claims for which payment is recommended and the total recommended amount of compensation. A table containing the breakdown of the amounts to be paid to each individual claimant will be provided to each respective country.

(Signed) Kamal HOSSAIN
Chairman

(Signed) Matti PELLONPÄÄ
Commissioner

(Signed) Rafael RIVAS-POSADA
Commissioner

Annex III

Decision by the Governing Council not to accept further corporate and government claims after 1 January 1996 taken at its 53rd meeting, held on 17 May 1995 at Geneva*

Hereafter, except as otherwise provided in decision 12 (S/24611, annex I) or for reasons of civil disorder, the Governing Council will not accept the filing of claims of corporations and other entities in category E and claims of Governments and international organizations in category F after 1 January 1996.

---

* Originally issued as document S/AC.26/Dec.30 (1995).